# THE VOTING MACHINE CONTRACT

A PROTEST AGAINST ITS RECOGNITION IN
ANY FORM BY THE CITY COUNCIL
OF THE CITY OF CHICAGO

SUBMITTED BY THE
CHICAGO BUREAU OF PUBLIC EFFICIENCY
315 PLYMOUTH COURT

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# THE VOTING MACHINE CONTRACT

## A PROTEST AGAINST ITS RECOGNITION IN ANY FORM BY THE CITY COUNCIL OF THE CITY OF CHICAGO

*To the Mayor and Aldermen of the City of Chicago.*

GENTLEMEN:—

Your Honorable Body is again called upon to take official cognizance of the ill-advised and extravagant contract made by the Board of Election Commissioners in July, 1911, for the purchase of 1,000 voting machines, the contract price of which amounts in the aggregate to $942,500. The Election Commissioners are requesting the Council to include in its appropriations for 1913 an item of $282,750 to be used for the payment of 300 of these machines. The first 200 machines delivered, the contract price of which was $188,500, have already been paid for under an appropriation made in 1912. The remaining 500 machines have not been delivered. If these 500 machines are delivered and have to be paid for by the City, it will be necessary for the Council to appropriate within the next two years a total of $754,000 (including the appropriation now sought), for the purpose of paying for voting machines, which the Supreme Court of Illinois has recently decided do not comply with the requirements of the voting machine statute.

In compliance with the request of the Election Commissioners, the Finance Committee has included in the

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appropriation ordinance submitted to the Council December 30, 1912, the following item:

"Voting machines and trucks—

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|---|---|
| 300 voting machines, at $942.50 each | $282,750.00 |
| All other items | 585.00 |
| Subject to payment by judgments or issuance of certificates | $283,335.00" |

It further appears from the ordinance that this sum of $283,335.00 is not appropriated from the Corporate Fund, but that it is "appropriated subject to judgments or issuance of certificates." No fund, however, is designated from which either judgments or certificates can be paid. Under these circumstances it is not clear in what manner the Council intends this $283,335.00 shall be paid in case judgment is rendered or certificates are issued.

In this connection it should not be overlooked, however, that the contract price of these machines is to be regarded as an "expense" incurred by the Election Commissioners. This is the view taken by the Corporation Counsel in his opinion rendered January 29, 1912. Section 1 of Article VII of the City Election law provides that "such expenditures shall be paid by the city treasurer * * * out of any money in the city treasury not otherwise appropriated." Attention is directed to the fact that the city's traction fund is "money in the city treasury not otherwise appropriated" and out of which it is possible the holders of voting machine certificates or warrants might enforce their claims.

The Chicago Bureau of Public Efficiency believes that the Council should take notice of this situation and should

refuse to appropriate further for these machines, which were purchased by the Board of Election Commissioners without consultation with the Council and in utter disregard of the policy of caution demanded by the interests of the taxpaying public.

### THE 1911 INVESTIGATION AND REPORT OF THE BUREAU

When it was learned in May, 1911, that the Board of Election Commissioners was planning to make a contract for the purchase of voting machines, the Chicago Bureau of Public Efficiency made an investigation of the subject. This investigation disclosed the fact that the voting machine was still in the experimental stage and that there were numerous objections to the purchase of a large number of such machines. In a report issued at that time the Bureau stated:

> The Chicago situation presents unusual obstacles to the successful use of voting machines. Among these are the long ballot made necessary by the large number of offices to be filled at some elections; the group voting for certain offices, such as judges and county commissioners; and the system of cumulative voting for members of the lower house of the general assembly, which is peculiar to Illinois. The fact that women may vote for university trustees, but not for other officers requires a restrictive device that introduces additional complications. The long ballot necessitates the use in Chicago of a larger and heavier machine than is required in other cities that have adopted voting machines. The size and weight of the machine cause it to present problems of transportation, of storage and of setting up in the voting booth. There are special complexities due to the use of the voting machine at a primary election at which nominations are to be made for a large number of offices.
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> Aside from the mechanical operation of the ma-

> chine itself, there are other elements of uncertainty connected with the use of voting machines that call for experimentation and caution. It cannot be told until the actual trial is made how rapidly the voting can be done by machine, even assuming the mechanism to operate perfectly so far as all except the human element is concerned. This Bureau learns that in Minneapolis, where voting machines are in use, the voting has been so much slower than anticipated that it has been found necessary to install two machines to a precinct of 600 voters, instead of one. The Illinois law contemplates a single machine to a precinct of 600 voters. Then there are the problems of transportation and storage and the proper setting of the machines in the booths. Three of these machines will make a truck load and it will require at least three men to handle one. Skilled persons will be required to set them up when taken from the storage room to the voting booth. It would seem that the Board of Election Commissioners ought to acquire experience in handling 50 or 100 machines before undertaking the burden of managing 1,200. This experience, moreover, should be in connection with the most trying elections, such as the primary of April, 1912, and the election of the following November, when the long ballot must be voted.

Inquiries made at that time disclosed the fact also that although the City of Chicago would be expected to make provision for paying for the machines to be purchased, the financial officers of the city had not been consulted in regard to the matter and further, that prior Boards of Election Commissioners had secured appropriations from the City Council before taking steps looking to the purchase of voting machines. In this connection it was pointed out that although the plans of the present Board contemplated the expenditure of approximately $1,000,000, no prior Board had deemed it wise to consider an initial expenditure in excess of $100,000.

As a result of this investigation, it seemed obvious, in view of the difficulties and uncertainties which existed, that ordinary business prudence demanded a policy of experimentation and caution on the part of the Election Commissioners. The main conclusions reached by the Bureau were summarized in its report as follows:

1. The number of voting machines to be purchased in the near future should be limited to one hundred at the most; and the purchase of a greater number of machines should be postponed until after trial at the primaries of April, 1912, and at the election of November, 1912, of such limited number of machines.

2. The Board of Election Commissioners should seek to secure the co-operation of the financial authorities of the city in advance of action looking to the purchase of voting machines, whatever the amount involved.

## THE CONTRACT OF 1911 AND THE APPROPRIATION OF 1912

In the face of the situation above set forth, of which they were fully advised, and notwithstanding the adverse comments of the public press, the Board of Election Commissioners and the Empire Voting Machine Company disregarded every principle of business prudence, and in July, 1911, entered into the contract mentioned for the purchase of 1,000 machines.

When the 1912 appropriation ordinance was before the Council, that body was asked to appropriate $188,500 for the payment of 200 of the machines. While the matter was still pending, the Bureau, on February 5, 1912, petitioned the Council not to make any appropriation "unless it [the contract] should be modified (1) to provide for the delivery of not to exceed 100 machines on the first installment, and (2) to relieve the Board from

the obligation to take 1,000 machines if those delivered on the first installment shall not prove satisfactory when placed in use." This suggestion on the part of the Bureau was disregarded. The appropriation asked for was made and the 200 machines were delivered and paid for.

At the time the Council was considering this appropriation of $188,500, it had before it, however, the opinion of the Corporation Counsel in which he advised that it was "incumbent on the city of Chicago to pay the obligations incurred by the Board of Election Commissioners in buying such voting machines." It is perhaps fair to assume that many of the aldermen voting for that appropriation believed it their duty to do so on the advice thus given by the Corporation Counsel.

## THE PRESENT SITUATION

The situation at the present time differs radically from that which existed in January and February, 1912. The Corporation Counsel in his opinion then rendered confined himself to the question of the liability of the city to pay the "obligations" incurred by the Board of Election Commissioners. At that time no opportunity had been afforded to test the machines at either a primary or a general election. He assumed apparently that the voting machines contracted for and to be delivered would meet the requirements of the voting machine law and that, when such machines were accepted by the Board of Election Commissioners, a binding obligation would be incurred.

The voting machine statute is explicit on the point that no voting machine shall be purchased unless it is so constructed as to meet all the requirements specified in

that act, among which is the requirement that "each elector can understandingly and within the period of one minute cast his vote for all candidates of his choice." The Board of Election Commissioners is given no power to purchase any machine which does not meet this requirement and it seems obvious that, if the Board were to make a contract for a machine which did not meet the above requirement, the contract so made would not create a binding obligation on the City because of the lack of power in the Board to make such a contract. It would seem equally clear that, no matter what may be the terms of the contract made by the Board, if the machine itself when delivered does not, in fact, meet the requirements of the voting machine statute, the city would not be bound. Attention is called, however, to the contract under which the machines in question were purchased. By its terms the Company "agrees that each machine so furnished shall in all respects comply with all the requirements of the Statutes of Illinois now in force relating to the use of voting machines."

If it be said that the Board of Election Commissioners has accepted the machines and in so doing has found that they meet the requirements of the statute, it is sufficient answer to say that the finding of the Board in this respect is not conclusive and that in the case of these particular machines the Board has only recently been overruled by the Supreme Court of the State.

## THE DECISION OF THE SUPREME COURT

On December 17, 1912, the Supreme Court handed down an opinion, in the case of the *People ex rel Hull* v. *Taylor et al.,* in which it holds that the voting machines, for the payment of which an appropriation is now asked,

do not comply with the voting machine statute in that they are not so constructed that "each elector, can understandingly, and within the period of one minute, cast his vote for all candidates of his choice." Moreover, the decision in this case requires the Election Commissioners to furnish ballot boxes and paper ballots in all precincts.

In its opinion in the foregoing case, the court said:

> It is insisted on behalf of the respondents [the Election Commissioners] that the action of the board of voting machine commissioners and the board of election commissioners in determining that the voting machines complied with the requirements of the law in this particular should be held conclusive upon this question; that the powers conferred on these officers require the exercise of judgment and are discretionary in their character, and that their determination of the question of fact is final. If a discretionary power is exercised so as to produce a manifest injustice, the courts may interfere to require its due exercise and prevent a public wrong. * * * If votes cannot, in fact, be cast upon the machines within the time allowed by law, their use will result in some voters being deprived of their votes. Such an injustice, if clearly shown, will justify the interference of the court to afford a remedy by *mandamus*. It is alleged in the answer that the voting machines in question have been in satisfactory use in various cities of different States for a number of years, and that arrangements have been made for the instruction on the day of election, and before that day, of voters in the use of the machine. On the argument of the cause one of the machines was present and demonstrations of the manner of its use were made by various persons. Fifty-three officers were to be voted for besides the presidential electors, and there were three public policy questions and four propositions to issue bonds. There were party nominations by six parties, al-

though one was for a part, only, of the offices. It is easy to vote a straight party ticket on the machine. It can be done in a few seconds. An expert in the use of the machine can vote a split ticket, even as large as the ticket at the November election, in one minute. **The requirement of the statute, however, is that "each elector can, understandingly, and within the period of one minute, cast his vote for all candidates of his choice."** "Each elector" does not mean here absolutely every elector, for a voter may be blind or crippled so as to be physically unable to use the machine, and the statute provides for such a condition, but the term does include at least every elector of ordinary intelligence having the reasonable use of his faculties and members. If the voter must be a trained expert—if he must be a man of more than ordinary intelligence, keenness of vision or alertness of motion—in order to be able to vote as he wishes within a minute, then the machine which requires these things of him does not comply with the law. **As a matter of fact, we find that the machine does not comply with the law in enabling the voter understandingly to cast his vote in one minute.** It is not enough that one voter or many voters can possibly, by strenuous effort, vote for the candidates they desire in one minute. It is necessary, at least, that the average voter who wishes to vote for candidates upon two or more or all of the various tickets can by a reasonable effort be surely able to cast the vote he desires to cast, within the time allowed him by law for doing so. We take into consideration the action and finding of the board of voting machine commissioners and the board of election commissioners as well as our own observation, and **we are constrained to find that the machines do not comply with the law in respect to the time within which votes can be cast, and that their use, if voters were allowed only one minute to vote, would result in the disfranchisement of many electors.**

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## CONCLUSION

In entering into a contract for the purchase and sale of 1,000 voting machines, the Board of Election Commissioners and the Empire Voting Machine Company chose to disregard not only the interest of the taxpaying public, but the counsel of caution and the principles of ordinary business prudence. They acted with their eyes open. There are no equities to be considered or preserved.

*It is the opinion of the Chicago Bureau of Public Efficiency that there is no legal liability on the part of the City to pay for the voting machines in question.* The Bureau believes that any appropriation by the Council would not only be illegal, but because of the flagrant wrong resulting to the community from the transaction, would expose the members of the Council to severe criticism.

The Bureau, therefore, respectfully petitions the City Council not to make any appropriation for the payment of said voting machines. It submits that the claim of the Empire Voting Machine Company should not be recognized by a contingent appropriation or in any other form. The Bureau further petitions the Council to adopt an order directing the Corporation Counsel to contest vigorously any suit or proceeding which may be brought to enforce payment for any of said machines.

Respectfully submitted,

CHICAGO BUREAU OF PUBLIC EFFICIENCY,
JULIUS ROSENWALD,
*Chairman.*

HARRIS S. KEELER,
*Director.*

CHICAGO, January 1, 1913.

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